

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JOSEPH J. DIBENEDETTO,  
Plaintiff,

vs.

NATIONAL RAILROAD PASSENGER  
CORPORATION,  
Defendant.

CIVIL ACTION NO.: 04-10570-RCL

**NATIONAL RAILROAD PASSENGER CORPORATION'S**  
**MOTION IN LIMINE TO PRECLUDE THE PLAINTIFF FROM OFFERING ANY**  
**EVIDENCE ON THE ISSUE OF CAUSATION**

The defendant National Railroad Passenger Corporation ("AMTRAK") moves in limine to exclude any evidence of the cause of the plaintiff's injuries at the trial of this matter on the grounds that: (1) expert testimony is necessary to prove causation; (2) no expert witnesses were identified or disclosed in a timely fashion, or in compliance with Fed. R. Civ. P. 26's disclosure requirements; and (3) any expected expert opinions do not meet the requirements of Fed. R. Evid. 702 and the standards established by the Supreme Court in Daubert v. Merrill-Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). As further grounds, the defendant states as follows:

In his *Complaint*, the plaintiff alleged that he suffered carpal tunnel syndrome as a result of repetitive trauma associated with his work activities while employed by AMTRAK. A copy of the plaintiff's *Complaint* is attached as Exhibit "A." The plaintiff claims that the everyday activities of his job (primarily the use of a hammer) exposed him to "occupational risk factors for carpal tunnel syndrome, including but not limited to repetition, force, vibration and awkward wrist posture" and resistive motions of the hand and wrist which have led to his injuries. Exh. A at ¶8. He also claims that his injuries were caused by the defendant's "failure to provide a timely and adequate ergonomic program designed to prevent occupational carpal tunnel syndrome." *Id.*

at ¶9(b).

In cases such as this, involving complex medical and liability issues, where the causal connection is not obvious to a layman, “such as a broken leg from being struck by an automobile,” expert testimony is required. Schmaltz v. Norfolk & Western Ry., 896 F. Supp. 180 (N.D.Ill. 1995) *quoting* Moody v. Maine Central Railroad Co., 823 F. 2d 693, 695 (1<sup>st</sup> Cir. 1987); *see also* Claar v. Burlington Northern Railroad Co., 29 F.3d 499, 503 (9<sup>th</sup> Cir. 1994) (“where special expertise is necessary to draw a causal inference, expert testimony is necessary.”); 4 F. Harper, F. James, O. Gray, The Law of Torts, 269. Expert testimony is also necessary to prove that the defendant’s ergonomic program was inadequate, that the plaintiff’s tools were defective and that these deficiencies somehow caused the plaintiff’s arthritis.

In order to recover in this case, the plaintiff must present some evidence that his alleged arthritis was caused by the defendant’s negligence. For the reasons advanced in the defendant’s *Motion In Limine To Preclude The Testimony Of The Plaintiff’s “Expert” Witnesses*, which is referred to and specifically incorporated herein by this reference, the plaintiff does not have an expert to testify that his injuries were caused by the defendant’s negligence or that the tools, workplace activities or “ergonomic” program caused his injuries. As expert testimony is required on the issue of causation, any lay witness called to testify in this case, including the plaintiff, must be precluded from testifying about the cause of the plaintiff’s injuries or about any other issues which would normally require expert testimony (such as the condition of the plaintiff’s tools and the defendant’s “ergonomic” program).

To date, the plaintiff has failed to identify any expert witness to testify that the plaintiff’s injuries were caused by his employment with AMTRAK or AMTRAK’s negligence. The

plaintiff has failed to identify his treating physician, Dr. Jesse Jupiter ("Dr. Jupiter"), as an expert witness and has failed to provide any of the disclosures required by Rule 26 with any opinion testimony which he expects to elicit from Dr. Jupiter. He has done the same with respect to his proposed liability expert, Robert Andres, M.D. As the deadline to identify experts and conduct expert discovery has long since passed, the plaintiff is now precluded from offering any witness to testify about the cause of the plaintiff's injuries. The plaintiff has failed to demonstrate that any of his alleged injuries were caused by his employment with AMTRAK and therefore, any evidence regarding the cause of his alleged injuries should be excluded.

In addition, even if the plaintiff's experts had been timely and adequately disclosed, their opinions are never the less inadmissible because they fail to meet the requirements of Fed. R. Evid. 702 and Daubert v. Merrill-Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). More specifically, any expert opinion that the plaintiff's arthritis was caused by his work-related activities is not reliable and therefore inadmissible. It is the defendants' position that any opinion that so-called "repetitive stress" injuries can be caused by any occupational task is inadmissible since this relationship is neither generally accepted in the relevant medical community nor is any opinion on this issue based on reliable scientific methodology. Furthermore, the plaintiff's expert's opinions are based neither on "sufficient facts or data" nor principles and methods which have been applied reliably to this case. Courts have consistently excluded experts in repetitive stress cases where their opinions are not based on sufficient facts or data due to the expert's failure to adequately investigate the plaintiff's actual work history, personal risk factors and potential other causes. For a more detailed discussion on this issue, AMTRAK refers to and specifically incorporates herein by this reference, its *Motion In Limine To Preclude The*

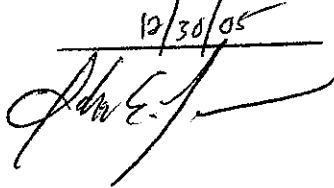
*Testimony Of The Plaintiff's Expert Witnesses*, which was also filed today.

**WHEREFORE**, for the above entitled reasons, because the plaintiff has no reasonable likelihood of proving causation at trial, any evidence of causation should be excluded.

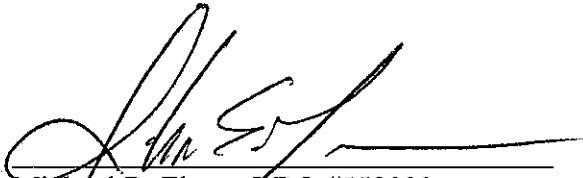
CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing pleading on all parties by hand/mail delivering same, to all counsel of record.  
Signed under the pains and penalties of perjury.

DATED

12/30/05  


Respectfully submitted,  
National Railroad Passenger Corporation,  
By its attorneys,



Michael B. Flynn, BBO #559023  
John E. Young, BBO #654093  
FLYNN & ASSOCIATES, P.C.  
400 Crown Colony Drive  
Suite 200  
Quincy, MA 02169  
(617) 773-5500  
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DATED: December 30, 2005

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
Boston Division**

JOSEPH J. DIBENEDETTO  
27 Western Avenue  
Wakefield, MA 01880

Plaintiff

vs.

NATIONAL RAILROAD  
PASSENGER CORPORATION  
253 Summer Street  
Boston, MA 02210

Defendant

04-10570 RCL

MAGISTRATE JUDGE Dean

JURY TRIAL DEMANDED

RECEIPT # 54760  
AMOUNT \$ 150  
SUMMONS ISSUED yes  
LOCAL RULE 4.1 yes  
WAIVER FORM yes  
MCF ISSUED yes  
BY DPTY. CLK. Tom  
DATE 3/23/04

NO.

**CIVIL ACTION**

1. The Plaintiff, Joseph DiBenedetto, is a competent adult individual residing at 27 Western Avenue, Wakefield, Massachusetts 01880.
2. The Defendant, National Railroad Passenger Corporation is a corporation organized and existing under the laws of the District of Columbia, doing business at and whose address for service of process is 253 Summer Street, Boston, Massachusetts 02210.
3. This suit is brought pursuant to an Act of Congress known as the Federal Employers' Liability Act (F.E.L.A.), 45 U.S.C. §§51-60; the Federal Safety Appliance Acts, 45 U.S.C. §§1-16; and the Boiler Inspection Acts, 45 U.S.C. §§22-34.
4. At all times material hereto, the Defendant, National Railroad Passenger Corporation, was engaged in Interstate commerce as a common carrier by railroad operating a line and system of railroads in the State of Massachusetts and other states of the United States.

5. At the time and place hereinafter mentioned, the acts of omission and commission causing injuries to the Plaintiff was done by the Defendant, its agents, servants, workmen and/or employees acting in the course and scope of their employment with and under the direct and exclusive control of the Defendant.

6. At the time and place hereinafter mentioned, the Plaintiff was employed by Defendant railroad and was acting in the scope of his employment by Defendant and was engaged in the furtherance of interstate commerce within the meaning of the F.E.L.A.

7. All the property, equipment and operations involved in this occurrence hereinafter referred to were owned and/or under the direct and exclusive control of the Defendant, its agents, servants, workmen and/or employees.

8. The Plaintiff has been employed by the Defendant from July 14, 1976 through and including the present as a carman, and, while working within the scope of his employment in and around Boston, Massachusetts, was exposed to occupational risk factors for carpal tunnel syndrome, including but not limited to repetition, force, vibration and awkward wrist posture.

9. Plaintiff's injuries were caused in whole or in part by the negligence, carelessness and recklessness of the Defendant and its agents, servants, workmen and/or employees, acting within the scope of their employment, which negligence consisted of the following:

- a) failure to provide the plaintiff with a safe place to work as required by the Federal Employers' Liability Act, 45 U.S.C. §§51-60; the Federal Safety Appliance 45 U.S.C. §§1-16; and the Boiler Inspection Acts, 45 U.S.C. §§22-34.

- b) failure to provide a timely and adequate ergonomic program designed to prevent occupational carpal tunnel syndrome;
- c) failure to comply with safety and operating rules and regulations of the Defendant;
- d) forcing the Plaintiff to work under hurried and/or awkward conditions;
- e) negligence of the Defendant's agents, servants, workmen and/or employees; and
- f) negligence at law; and
- g) otherwise failing to exercise due and adequate care under the circumstances including, but not limited to, a lack of adequate manpower.

10. As a direct result of the Defendant's negligence, through its agents, servants, workmen and/or employees, the Plaintiff suffered occupational carpal tunnel syndrome.

11. The Plaintiff was diagnosed with occupational carpal tunnel syndrome which required surgery.

12. As a direct result of the Defendant's negligence, through its agents, servants, workmen and/or employees, the Plaintiff has been unable to attend to his usual duties and occupations, all of which caused substantial financial loss and all of which may and probably will continue in the future.

13. As a direct result of the Defendant's negligence, through its agents, servants, workmen and/or employees, the Plaintiff has been and may continue to be required to receive and undergo medical treatment and medical care, including surgery, and has incurred



reasonable and necessary medical expenses, all of which may and probably will continue in the future.

14. As a direct result of the Defendant's negligence, through its agents, servants, workmen and/or employees, the Plaintiff has sustained pain, suffering, inconvenience, stress and a loss of enjoyment of life and may continue to suffer same for an indefinite period of time in the future.

15. The Defendant has a duty to provide a reasonably safe place to work. It had a non-delegable duty to insure that the Plaintiff had adequate qualified assistance to perform the functions of his work without unnecessary risk of injury to himself. The Defendant has a duty to provide a sufficient number of employees to perform assigned work, and its failure to provide adequate assistance can be a breach of its duty to provide a safe place for the Plaintiff to work, and will entitle the Plaintiff to a recovery against the Defendant if any such failure was a cause, in whole or in part, of the injuries claimed by the Plaintiff.

WHEREFORE, the Plaintiff demands judgment against the Defendants in an amount in excess of ONE HUNDRED FIFTY THOUSAND DOLLARS, (\$150,000.00).

Dated: 3/18/04

HANNON & JOYCE

BY:

THOMAS J. JOYCE, III, ESQUIRE  
The Public Ledger Building - Suite 1000  
150 S. Independence Mall West  
Philadelphia, PA 19106  
(888) 222-3352  
Attorney for Plaintiff

Dated:

LAWSON & WEITZEN, LLP

MICHAEL J. MCDEVITT, BBO #564720  
88 Black Falcon Avenue, Suite 345  
Boston, MA 02210  
(617) 439-4990  
Local Counsel for Plaintiff

JS 44 (Rev. 3/99)

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Joseph J. DiBenedetto  
27 Western Avenue  
Wakefield, MA 01880

(b) County of Residence of First Listed Plaintiff Middlesex  
(EXCEPT IN U.S. PLAINTIFF CASES)

**DEFENDANTS**

National Railroad Passenger Corporation  
253 Summer Street  
Boston, MA 02210

County of Residence of First Listed  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

(c) HANNON & JOYCE  
The Public Ledger Bldg. - Ste. 1000  
150 S. Independence Mall West  
Philadelphia, PA 19106  
(215) 446-4460  
Attorney for Plaintiff

LAWSON & WEITZEN LLP  
88 Black Falcon Avenue  
Suite 345  
Boston, MA 02210  
(617) 439-4990  
Local Counsel for Plaintiff

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4 DEF
- Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 160 Recovery of Overpayment of Student Loans (Excl. Veterans) <input type="checkbox"/> 170 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 180 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input checked="" type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13 USC) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause.  
Do not cite jurisdictional statutes unless diversity.)

Federal Employers Liability Act 45 U.S.C. §§51-60 et seq.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 150,000

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions)

JUDGE

DOCKET NUMBER

DATE 3/19/04

SIGNATURE OF ATTORNEY FOR RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAO. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Joseph J. DiBenedetto vs. National Railroad Passenger Corporation
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?  
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)  
YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?  
YES ☐ NO ☒
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?  
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).  
YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?  
Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?  
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)  
YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Thomas J. Joyce, IIIADDRESS The Public Ledger Bldg. - Ste. 1000 150 S. Independence Mall W. Philadelphia 19106TELEPHONE NO. (215) 446-4460